

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MARLIN E. JONES,

Plaintiff,

V.

**CITY OF NORTH PLATTE, MARTIN
GUTSCHENRITTER, Chief of Police,
KENDALL ALLISON, Police Officer,
and JEANNE HINRICH,**

Defendants.

CASE NO. 8:10CV6

MEMORANDUM AND ORDER

This matter is before the court on its own motion. On April 20, 2010, this court conducted an initial review of Plaintiff's Complaint, finding that Plaintiff's Complaint failed to state a claim upon which relief may be granted as to all Defendants. (Filing No. [11](#).) In particular, the court determined that Plaintiff failed to "allege that there is a continuing, widespread, persistent pattern of unconstitutional misconduct by the City of North Platte or its employees, or that the City of North Platte's policymaking officials were deliberately indifferent to or tacitly authorized any unconstitutional conduct." ([Id.](#) at CM/ECF p. 5.) The court also found that Plaintiff failed to "allege that an unconstitutional custom was the moving force behind his injuries." ([Id.](#)) The court dismissed all claims against Defendant Hinrich and granted Plaintiff until May 19, 2010, to file an amended complaint to adequately allege claims against the remaining three Defendants. ([Id.](#) at CM/ECF pp. 6-7.)

On May 5, 2010, Plaintiff filed his Amended Complaint. (Filing No. [12](#).) However, even liberally construed, Plaintiff's Amended Complaint suffers from the same defects as his original Complaint. Indeed, except for the addition of a few paragraphs relating to the already-dismissed Defendant Hinrich, the allegations of the Amended Complaint are

identical to the original. As such, Plaintiff has not set forth enough factual allegations to “nudge[] [his] claims across the line from conceivable to plausible,” and his claims “must be dismissed” for failing to state a claim upon which relief can be granted. [*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 569-70 \(2007\)](#); see also [*Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950 \(2009\)](#) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”). For these reasons, and for the reasons set forth in the court’s April 20, 2010, Memorandum and Order, Plaintiff’s Amended Complaint fails to state a claim upon which relief may be granted and is dismissed in its entirety.

IT IS THEREFORE ORDERED that:

1. Pursuant to [28 U.S.C. § 1915\(e\)\(2\)\(ii\)](#), Plaintiff’s Amended Complaint is dismissed without prejudice because it fails to state a claim upon which relief may be granted; and
2. A separate judgment will be entered in accordance with this Memorandum and Order.

DATED this 12th day of May, 2010.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge

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